



Department of Public Safety and Correctional Services

Office of the Secretary Office of Government and Legislative Affairs

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BILL: HOUSE BILL 742

POSITION: OPPOSE

EXPLANATION: This bill provides that an inmate with a serious mental illness may not be placed on restrictive housing, except if there is an imminent threat of harm or if medically necessary. In addition, it provides that an inmate with a serious mental illness may not be placed in restrictive housing for longer than 15 days and be provided physical and mental assessments.

COMMENTS:

- The Department's Division of Correction (DOC) operates approximately 17 State correctional facilities which house offenders sentenced to incarceration for 18 months and longer. The Department also runs the Baltimore City Jail, which houses pretrial detainees and inmates sentenced to incarceration for 18 months and less.
- House Bill (HB) 742: (1) conflicts with national best practices and standards set by the American Correctional Association; (2) the Department is already making substantial progress to improve its utilization of restrictive housing; (3) the definition of Serious Mental Illness as proposed by HB 742 is overly broad; and, (4) the mandated assessments under the bill pose a significant fiscal and operational challenge.

(1) HB 742 conflicts with national best practices and standards set by the American Correctional Association.

- In January 2020, DPSCS signed a Memorandum of Understanding (MOU) with the American Correctional Association (ACA) to accredit all of the Department's correctional facilities. Accreditation will require adherence to the newly released performance based standards manual, *Performance-Based Standards and Expected Practices for Adult Correctional Institutions* (5th ed.). This includes the newly created comprehensive best practices concerning restrictive housing developed as the result of five years of comprehensive national research and community input.
- As it relates to placing an inmate with a serious mental illness on restrictive housing, the ACA performance-based standards and expected practices

specifically state, an inmate diagnosed with a serious mental illness will not be placed in restrictive housing, unless it has been determined there is an immediate and present danger to others or the safety of the institution. There is also an active individualized treatment plan that includes weekly monitoring by mental health staff, treatment as necessary, and steps to facilitate the transition of the offender back into general population.

- ACA standards and the Department's policies, practices, and procedures continue to change and evolve as science and evidence based national best practices change and improve over time. This bill would create a statutory mandate on an area in the criminal justice system that is similarly subject to change. It is imperative the Department's operations have the ability to remain nimble based on the ever-changing framework of the criminal justice arena.

(2) The Department is already making substantial progress to improve its utilization of restrictive housing.

- Several measures have been taken by the Department to address its restrictive housing practices in an effort to reduce the number of inmates on restrictive housing and to reduce the amount of time in a restrictive housing environment.
- The Department utilizes Serious Mental Illness (SMI) housing, a step down process designed to provide a continuum of care and least restrictive environment consistent with institutional safety and security for those inmates with a diagnosed serious mental illness who earn repeated disciplinary segregation due to violent and/or dangerous behavior, and who may benefit from a structured program tailored to address specific mental health needs.
- As a result of the COMAR changes to Inmate Disciplinary process implemented in 2018, the Department has not only seen a reduction in the amount of placements on restrictive housing, but also the average length of placements on restrictive housing has decreased.
 - Between FY 2018 and FY 2019, there was a 6.8% decrease in disciplinary placements.
 - In FY 2019, the overall average time spent in restrictive housing decreased by 15%.
- HB 742 also requires each inmate be provided de-escalation techniques and opportunities before placement on restrictive housing.
 - The Department partnered with the National Institute of Corrections (NIC) to create Crisis De-escalation Teams (CDT) throughout the Department. The goal of the CDT is to increase facility safety and reduce the use of force incidents involving an inmate in crisis by utilizing the correctional-based de-escalation training.

- Successful de-escalation of an incident leads to alternative measures used to address the inmate's behavior, leading to fewer placements on segregation.

(3) The definition of Serious Mental Illness as proposed by HB 742 is overly broad.

- HB 742 defines "serious mental illness;" however, the definition is inconsistent with the definition used by the Department to make a serious mental illness diagnosis. The Department defines serious mental illness (SMI) in accordance with the COMAR. The definition states:

"Serious mental illness" means a mental disorder that is:

(a) Manifest in an individual 18 years old or older;

(b) Diagnosed, according to a current diagnostic classification system that is recognized by the Secretary as:

(i) Schizophrenic disorder;

(ii) Major affective disorder;

(iii) Other psychotic disorder; or

(iv) Borderline or schizotypal personality disorder, with the exclusion of an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct; and

(c) Characterized by impaired functioning on a continuing or intermittent basis, for at least 2 years, and includes at least three of the following:

(i) Inability to maintain independent employment;

(ii) Social behavior that results in interventions by the mental health system;

(iii) Inability, due to cognitive disorganization, to procure financial assistance to support living in the community;

(iv) Severe inability to establish or maintain a personal support system; or

(v) Need for assistance with basic living skills."

- The definition of SMI under HB 742 includes individuals who "demonstrated difficulty maintaining activities of daily living, including: (1) eating; (2) maintaining personal hygiene; (3) participating in recreation or a pervasive pattern of dysfunctional, bizarre, or disruptive social interaction as a consequence of an underlying mental disorder." There may be a number of other factors attributing to an individual's ability eat, maintain personal hygiene, or participate in recreation unrelated to a current mental health diagnosis.

(4) The mandated assessments under the bill pose a significant fiscal and operational challenge.

- Additionally, HB 742 will require that each inmate placed on restrictive housing be assessed no later than 4 hours after placement and every 24 hours, thereafter.
 - To comply with this requirement would require a modification to the mental health contract, and additional medical staffing, including registered nurses, mental health counselors and social workers. Additional correctional officers would also be required to provide a safe and secure environment during the assessment for both staff and employee. **The total cost for staffing to complete mental health and physical assessments every 24 hours is estimated at over \$15M.**

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully requests an **UNFAVORABLE** from the Committee on House Bill 742.